

² The Board notes that, following the July 27, 2021 decision, appellant submitted additional evidence to the Board. However, the Board’s *Rules of Procedure* provides: “The Board’s review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal.” 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On January 28, 2021 appellant, then a 69-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral wrist pain due to factors of his federal employment. He noted that an attached statement explained how his employment factors caused his condition, however, no such statement was contained in the record. Appellant noted that he first became aware of his claimed injury on December 16, 2021 and realized its relation to his federal employment on January 26, 2021.³ On the reverse side of the claim form, his supervisor, M.J., indicated that appellant's work was modified so that he did not have to lift items over 10 pounds and that he was attending physical therapy daily. The employing establishment challenged appellant's claim because appellant did not submit any factual or medical documentation.

In a development letter dated February 5, 2021, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of additional factual and medical evidence needed and provided a questionnaire for his completion. In a separate development letter of even date, OWCP requested additional information from the employing establishment, including comments from a knowledgeable supervisor and an explanation of appellant's work activities. It afforded both parties 30 days to respond.

A January 26, 2021 report from Dr. Juan Zamora, a Board-certified physician specializing in family medicine, related appellant's history of injury. Appellant awoke on December 16, 2020 with sharp pain in his left wrist and continued to experience frequent pain and discomfort extending into his middle fingers. A similar pattern of pain started in his right wrist on December 30, 2020. Appellant also began to experience right elbow pain on January 4, 2021. Pain in each of these areas increased with activity. Dr. Zamora opined that appellant's condition was work related and recommended diagnostic testing. He diagnosed unspecified sprains of the right elbow and both wrists.

On February 9, 2021 appellant responded to OWCP's development questionnaire, noting that he worked limited duty and retired from the employing establishment on February 1, 2021. He indicated that his responses to OWCP's remaining questions were contained in an attached statement, however, no such statement is found in the record.

Appellant underwent bilateral wrist x-rays and a magnetic resonance imaging (MRI) scan on February 10, 2021. The x-ray of his left wrist revealed severe triscaphe and mild trapeziometacarpal osteoarthritis and a one millimeter ulnar positive variance indicating possible ulnar impaction syndrome or triangular fibrocartilage complex (TFCC) tears. The x-ray of appellant's right wrist revealed severe triscaphe and mild radiocarpal and trapeziometacarpal osteoarthritis. The MRI scan of his left wrist demonstrated tricompartmental wrist effusions, chondromalacia within the lunate and distal ulna, which could relate to ulnar impaction syndrome and/or osteoarthritis, severe triscaphe and mild-to-moderate trapeziometacarpal osteoarthritis,

³ A January 20, 2021 notice of separation indicated that appellant retired from the employing establishment on January 31, 2021.

increased signal within the TFCC compatible with either a TFCC tear or TFCC degeneration, and mild generalized extensor tenosynovitis. The MRI scan of appellant's right wrist demonstrated mild generalized extensor tenosynovitis with grade 1 strain of the extensor carpi ulnaris tendon, tricompartamental wrist effusions, severe triscaphe and mild trapeziometacarpal osteoarthritis, and increased signal within the TFCC indicative of either a TFCC tear or TFCC degeneration.

In a February 23, 2021 report, Dr. Zamora reviewed the February 10, 2021 x-ray and MRI scans and diagnosed chondromalacia, osteoarthritis, and TFCC degeneration, possibly with tears. He opined that appellant's conditions were due to the natural wear and tear of the body but were aggravated by his 42 years of work for the employing establishment. Dr. Zamora advised appellant to begin a regimen of physical rehabilitation.

By decision dated March 29, 2021, OWCP denied appellant's occupational disease claim, finding that the medical evidence submitted was insufficient to establish causal relationship between his diagnosed conditions and the accepted factors of his federal employment.

Appellant subsequently submitted an undated statement responding to OWCP's initial development questionnaire. He described his employment activities, including daily sorting and delivering of mail and parcels weighing up to 70 pounds and carrying up to 35 pounds of letters, flats, and small parcels in a satchel carried on left shoulder such that weight was almost entirely on his left shoulder and arm. Appellant noted that he had been under lifting restrictions at work since July 2020 due to a left arm injury. He compensated for his left arm injury by doing more work with his right arm. Appellant's left wrist and hand pain began during the night on December 16, 2020, and he reported it to his station manager, D.D, the next day. Similar pain began in his right wrist on December 30, 2020 and in his right arm and elbow on January 4, 2021. Appellant experienced greater pain and discomfort during periods of activity. He reported this history to his manager, M.J., on January 13 and 15, 2020. Appellant's activities outside of work consisted mainly of listening to music and watching movies. He believed that his symptoms were indicative of repetitive motion injuries due to the nature of his work for the employing establishment.

OWCP received February 23, 2021 report from Dr. Zamora in which he again reviewed the February 10, 2021 x-rays and MRI scans and diagnosed chondromalacia, osteoarthritis, and TFCC degeneration, possibly with tears. Dr. Zamora opined that appellant's conditions were due to the natural wear and tear of the body but were aggravated by his 42 years of work at the employing establishment. Specifically, he explained that appellant's work duties, including carrying and handling heavy loads, sorting and casing mail, repetitively twisting at the wrist to open mailboxes, and repetitively locking and unlocking his work vehicle throughout the day, aggravated his conditions. Dr. Zamora advised that appellant begin a regimen of physical rehabilitation.

On April 28, 2021 appellant requested reconsideration. In support of his request, he submitted an April 27, 2021 statement, in which he contended that his more than 42 years of service to the employing establishment, including a great deal of overtime, directly contributed to his diagnosed conditions. Appellant noted that, as a result of a previously accepted left arm injury, assigned OWCP File No. xxxxxx014, he had been restricted to eight hours of work per day during the latter half of 2020. Finally, he argued that the medical documentation proved causal

relationship between his diagnosed medical conditions and the accepted factors of his federal employment.

By decision dated July 27, 2021, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,⁵ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁶ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁸

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁹ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.¹⁰ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical

⁴ *Supra* note 1.

⁵ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *See also* *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁹ *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).¹¹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted factors of his federal employment.

In his January 26, 2021 report, Dr. Zamora diagnosed unspecified sprains of the right elbow and both wrists and opined that appellant's condition was work related. Similarly, in a February 23, 2021 report, he diagnosed chondromalacia, osteoarthritis, and TFCC degeneration, possibly with tears, and opined that appellant's conditions were due to the natural wear and tear of the body, but were aggravated by appellant's 42 years of work for the employing establishment. While he provided an affirmative opinion suggestive of causal relationship, Dr. Zamora did not offer medical rationale sufficient to explain why he believes appellant's employment duties could have resulted in or contributed to his diagnosed conditions. Without identifying specific employment duties or explaining how they caused or aggravated appellant's conditions, Dr. Zamora's letter is of limited probative value and is insufficient to meet appellant's burden of proof.¹²

In a separate February 23, 2021 report, Dr. Zamora repeated the above diagnoses and again opined that appellant's conditions were due to the natural wear and tear of the body, but were aggravated by appellant's 42 years of work for the employing establishment. Specifically, he explained that appellant's work duties, including carrying and handling heavy loads, sorting and casing mail, repetitively twisting at the wrist to open mailboxes, and repetitively locking and unlocking his work vehicle throughout the day, aggravated his conditions. However, Dr. Zamora did not explain how any of these described employment activities caused appellant's diagnosed chondromalacia, osteoarthritis, and TFCC degeneration. To be of probative medical value, a medical opinion must explain how, physiologically, the movements involved in the employment activities caused or contributed to the diagnosed conditions.¹³ As such, Dr. Zamora's report is insufficient to establish appellant's claim.

The remaining medical evidence consisted of bilateral x-ray and MRI scans of appellant's wrists. The Board has held, however, that diagnostic testing reports, standing alone, lack probative value on the issue of causal relationship as they do not address the relationship between the accepted employment factors and a diagnosed condition.¹⁴ For this reason, this evidence is also insufficient to meet appellant's burden of proof.

¹¹ *Id.*; Victor J. Woodhams, *supra* note 8.

¹² See A.P., Docket No. 19-0224 (issued July 11, 2019).

¹³ A.W., Docket No. 19-0327 (issued July 19, 2019); M.D., Docket No. 18-0195 (issued September 13, 2018); Jimmie H. Duckett, 52 ECAB 332 (2001).

¹⁴ W.M., Docket No. 19-1853 (issued May 13, 2020); L.F., Docket No. 19-1905 (issued April 10, 2020).

As appellant has not submitted rationalized medical evidence sufficient to establish a medical condition causally related to the accepted factors of his federal employment, the Board finds that he has not met his burden of proof.¹⁵

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.¹⁶

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.¹⁷

A request for reconsideration must be received by OWCP within one year of the date of OWCP decision for which review is sought.¹⁸ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁹ If the request is timely but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.²⁰

¹⁵ See *T.J.*, Docket No. 19-1339 (issued March 4, 2020); *F.D.*, Docket No. 19-0932 (issued October 3, 2019); *D.N.*, Docket No. 19-0070 (issued May 10, 2019); *R.B.*, Docket No. 18-1327 (issued December 31, 2018).

¹⁶ 5 U.S.C. § 8128(a); see *L.D.*, Docket No. 18-1468 (issued February 11, 2019); see also *V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

¹⁷ 20 C.F.R. § 10.606(b)(3); see *L.D.*, *id.*; see also *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹⁸ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

¹⁹ *Id.* at § 10.608(a); see also *A.F.*, Docket No. 19-1832 (issued July 21, 2020); *M.S.*, 59 ECAB 231 (2007).

²⁰ *Id.* at § 10.608(b); *J.B.*, Docket No. 20-0145 (issued September 8, 2020); *Y.K.*, Docket No. 18-1167 (issued April 2, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

Appellant has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, appellant has not advanced a relevant legal argument not previously considered. Consequently, he is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).²¹

Appellant also did not submit relevant and pertinent new evidence in support of his reconsideration request. The underlying issue on reconsideration is whether appellant has met his burden of proof to establish a medical condition causally related to the accepted factors of his federal employment. This is a medical issue which is addressed by relevant medical evidence not previously considered.²²

With his request for reconsideration, appellant submitted an undated response to OWCP's initial development questionnaire, a February 23, 2021 medical report from Dr. Zamora, and an April 27, 2021 statement contending that his conditions were causally related to the accepted factors of his federal employment. The undated questionnaire response and the April 27, 2021 statement do not constitute relevant and pertinent new evidence as they are not medical evidence. Further, Dr. Zamora's separate February 23, 2021 medical report substantially replicates a previously considered report of even date. The only addition in the later-submitted report was a list of employment activities that he believed aggravated appellant's medical conditions. Dr. Zamora's did not, however, offer an explanation of the causal relationship between those activities and the diagnosed conditions. The Board has held that the submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.²³ As such, appellant is not entitled to further review of the merits of his claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).²⁴

The Board, accordingly, finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.²⁵

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted factors of his federal employment. The Board further

²¹ *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

²² *Y.L.*, Docket No. 20-1025 (issued November 25, 2020).

²³ See *T.T.*, Docket No. 19-0319 (issued October 26, 2020); *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECB 140 (2000); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

²⁴ *Supra* note 16.

²⁵ *J.B.*, *supra* note 20; *D.G.*, Docket No. 19-1348 (issued December 2, 2019).

finds that OWCP properly denied his request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the March 29 and July 27, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.²⁶

Issued: March 11, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

²⁶ Upon return of the case record, OWCP may consider administratively combining the current claim file with OWCP File No. xxxxxx014.